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RR RUEHLN RUEHSK RUEHVK RUEHYG
DE RUEHSI #2336/01 3471022
ZNR UUUUU ZZH
R 121022Z DEC 08
FM AMEMBASSY TBILISI
TO RUEHC/SECSTATE WASHDC 0562
INFO RUEAWJA/DEPT OF JUSTICE WASHINGTON DC
RUCNCIS/CIS COLLECTIVE

UNCLAS SECTION 01 OF 04 TBILISI 002336

SIPDIS

STATE FOR INL/AEE, EUR/ACE, EUR/CAC
DOJ FOR OPDAT (NEWCOMBE)

E.O. 12958: N/A

TAGS: [SNAR](#) [PGOV](#) [PHUM](#) [KCRM](#) [KJUS](#) [GG](#)

SUBJECT: A MAGICAL MYSTERY TOUR - - A YEAR OF REGIONAL MOCK JURY TRIALS

¶1. Summary: In preparation for the new, Western style Criminal Procedure Code (CPC), the U.S. Department of Justice's Office of Overseas Prosecutorial Development, Assistance and Training (DOJ/OPDAT) and the Government of Georgia (GOG) built upon their 2007 "train the trainers" program and conducted mock jury trials in each of Georgia's eight regions in 2008. In 2007, DOJ/OPDAT trained a cadre of 30 prosecutors in a series of monthly seminars to use the Western style, in-court adversarial skills and practiced them in mock jury trials conducted in Tbilisi, Georgia. The trainers returned to Georgia's eight regions and taught more than 600 of their colleagues these same skills in order to prepare them for the CPC's implementation. Building on the "train the trainer" approach, DOJ/OPDAT traveled to each region, reviewed the skills with the regional prosecutors, and conducted mock jury trials. These seminars provided the regional prosecutors with an opportunity to test their trial advocacy skills and afforded DOJ/OPDAT a chance to determine whether the "train the trainer" approach succeeded. Initially, the prosecutors struggled with translating their theoretical knowledge into success. During the seminars, they demonstrated a basic understanding of the trial advocacy skills, but could not use them to convict defendants. The prosecutors did not quit. Each month, in a different region, different prosecutors practiced their skills. They also learned that successful prosecution under the CPC requires more than simply appearing in court, presenting material secured outside of court, and arguing the defendant's guilt. Instead, they must be attorneys, teachers, and actors. They must know the law and skillfully use it to cull from in-court witnesses and other evidence the facts necessary to prove the defendant's guilt. As teachers, they need to marshal the facts and explain to the jurors why the facts prove the defendant's guilt. Finally, they must be actors. The prosecutors must present the evidence in such a manner that it holds the jury's attention. This means that the evidence must be presented in understandable segments so that the jury comprehends why certain evidence is significant - - and should be given more weight - - while other evidence should be discounted. Throughout the seminars, DOJ/OPDAT watched the prosecutors learn that the new system will require more from them to convict a defendant; however, they also learned that if they use the new skills they will be just as successful. End Summary.

Come Together Right Now

¶2. In December 2006, Georgia's Parliament passed the CPC for its first reading. This was a clear indication that Georgia intends to move from the Soviet style of prosecution in which prosecutors build a dossier based on out of court statements that are presented in court to a Western style in-court adversarial process in which the witnesses and all of the evidence is presented in open court. DOJ/OPDAT readily recognized that the prosecutors, the defense bar, and judges needed to be trained to use the new skills. In 2007, DOJ/OPDAT embarked on a year-long train the trainers program to teach a cadre of 30 prosecutors the skills necessary to successfully prosecute cases under the CPC.

¶3. After learning the skills in a seminar, the prosecutors practiced them in mock court competitions. From March through May 2007, the prosecutors squared off against each other in the Tbilisi Appellate Court playing the role of both defense lawyers and prosecutors. Furthermore, local judges also participated in the mock court to learn the skills that they will need to preside over criminal cases using the new system. In June 2007, ABA/ROLI trained defense lawyers began to participate. In September, the mock court trials became jury trials as law students from local universities played the role of jurors. After each monthly session, the trainers returned to their offices and conducted identical seminars for their colleagues. They taught their colleagues the skills they learned each month and created local mock trials in which the prosecutors and the judges participated.

¶4. The train the trainer program created a cadre of 30 individuals capable of teaching the necessary skills to more than 600 prosecutors. Furthermore, the cadre also learned that the new system will require them to present more evidence to convict a defendant than they currently present. Additionally, the prosecutors learned that the new system will require them to marshal the evidence that they obtain using their legal skills and present it to the trier of fact - - whether a judge or a jury - - to explain why the defendant is guilty of the charged crime. Although some prosecutors initially cringed at the new approach, they eventually embraced it and enjoyed trying cases using the new system. Several prosecutors commented that the mock jury trials were the most efficient manner for practicing the skills because they allowed them to test their skills and try different approaches.

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Help! I Need Somebody

¶5. In February 2008, DOJ/OPDAT and ABA/ROLI ventured into Georgia's eight regions to conduct mock jury trials with the regional attorneys. The regional trainings provided DOJ/OPDAT with an opportunity to determine whether the train the trainer approach adopted in 2007 worked and provided the regional attorneys with a chance to test their skills in mock jury trials against ABA/ROLI trained defendants. Initially, the prosecutors did not fare well. This caused great concern in the Office of the Public Prosecution Service (OPP) as it questioned whether prosecutors could be as successful using the new skills as they have been in the past.

¶6. For example, in Gori and Mtskheta, Georgia, the prosecutors failed to convict a single defendant in any of the mock jury trials. The juries routinely said that the prosecutors tried a better case, but did not convince the jury to convict the defendant. In other words, the prosecutors were more fundamentally sound, but could not marshal the facts that they possessed to convince the jury that the defendant was guilty. This information was helpful because it demonstrated that the train the trainer approach worked. The trainers taught the prosecutors the basic skills that they will need to convict defendants. However, they needed to learn how to translate these skills into successful convictions. Absent successful convictions in the mock jury trials, the prosecutors would lack the confidence in the skills.

¶7. DOJ/OPDAT worked with the Embassy to identify international visitors programs to send prosecutors to the United States. Programs such as Open World and the International Visitors Program provided several prosecutors with an opportunity to view their U.S. counterparts in action and learn from them. Prosecutors observed criminal trials in Jacksonville, Florida; St. Louis, Missouri; and Atlanta, Georgia and saw how their U.S. counterparts used the same skills to overcome the presumption of innocence. Moreover, the U.S. prosecutors taught the Georgians how to marshal the facts that they gleaned from direct and cross examination to support their arguments that the defendant was guilty of the charged crime. The prosecutors came away from these visits with greater confidence that the skills can be used to convict a defendant and a renewed commitment to learn

the skills.

Here Comes the Sun

¶8. In Rustavi, the prosecutors renewed sense of confidence and commitment bore fruit. In four of six mock jury trials, the juries found the defendant guilty of the charged crime. Most prosecutors used skills such as direct examination to glean from their witnesses the facts necessary to convict the defendant. Furthermore, they used cross examination to undermine the defense witnesses' credibility. For example, the defense alibi witness claimed that the defendant could not have been at the crime because he spent the evening with the alibi witness. The prosecutors succeeded in pointing out that the alibi witness never approached the police after the defendant's arrest. Instead, good police work resulted in the police questioning the witness. The prosecutors asked the jury if it was reasonable for the defendant's best friend and alibi witness to wait for the police to contact him rather than going to the police once he learned that the defendant was arrested? In most cases, the jurors said, "no." Moreover, the prosecutors noted Qcases, the jurors said, "no." Moreover, the prosecutors noted another witness - - the defendant's employer - - could not be trusted because he was biased. The defendant was a marquee car salesman for the witness, and the witness had a pecuniary interest in the jury acquitting the defendant. If the defendant was in prison, he could not sell cars, and the witness would lose his best salesman.

¶9. The success in Rustavi demonstrated to the prosecutors that the new CPC and the corresponding trial skills will not hinder their ability to convict defendants. In fact, used properly, the new CPC will engender greater public confidence in the convictions for two reasons. First, the public will be able to view all of the evidence used to convict a defendant. All of the evidence must be introduced in open court rather than the dossier building approach currently in use. This means that the public will be able to view, first hand, all of the evidence that the prosecution uses to prove the defendant's guilt. Second, the new CPC increases the public's faith in the Rule of Law. Since the new CPC envisions jury trials, individuals will be convicted by a jury of their peers rather than by the court. This means that the decision to find a defendant guilty no longer rests in the government's hands. Instead, common citizens listen to the evidence and decide a defendant's fate. If the government fails to provide sufficient evidence or overreaches in its charges, the jury will acquit the defendant.

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Can't Buy Me Love

¶10. All success, however, is not a straight line. Fresh from its successes in Rustavi, the prosecutors traveled to Kutaisi, Georgia. Kutaisi is the former home of Georgia's most notorious gang - - the "Thieves - in - Law." For many years the "Thieves - in - Law" were the most organized crime syndicate in Georgia. With DOJ/OPDAT support in drafting and enacting a Racketeer Influenced and Corrupt Organizations (RICO) type act, the GOG successfully prosecute and eliminated this organization in Georgia. However, vestiges of good will for the "Thieves - in - Law" remain in Kutaisi. As one potential juror noted during the voir dire process (i.e., the process of selecting jurors for the trial), boys in Kutaisi grew up dreaming of being a "Thief - in - Law" and girls dreamed of marrying such a person. Consequently, many of the jurors were already predisposed to find a defendant not guilty.

¶11. This did not bode well for the prosecutors, but they did not shrink from the challenge. Although the prosecutors lost five of the seven mock trials, they learned two important lessons. First, they learned the importance of jury selection. The mock jury trials did not allow the prosecutors to actually strike anyone from the potential jury pool. However, the prosecutors learned that selecting a jury is just as important as actually trying the case.

If a prosecutor fails to identify individuals already predisposed in the defendant's favor, it will be difficult for the prosecutor to successfully convince the jury that the defendant is guilty. Thus, the prosecutors learned that they must take the jury selection process very seriously. Second, the prosecutors learned that notwithstanding a community's potential bias in the defendant's favor, the prosecutors can be successful if they properly employ the new techniques. The successful prosecutors effectively used their skills to prove their case against the defendant. They obtained the necessary facts and marshaled them for the jury such that the jury could come to no other conclusion except that the defendant was guilty. This lesson further impressed upon the prosecutors the importance of learning the in-court adversarial skills that will be necessary to successfully prosecute cases using the CPC.

Nowhere Man You Don't Know What You're Missin'

¶12. Although ABA/ROLI participated in most of the mock jury trials, it was not able to participate in everyone. Consequently, the prosecutors conducted mock jury trials against each other. In Akhaltsikhe and Signaghni, the prosecutors again played the roles of both defense lawyers and prosecutors. This gave more prosecutors an opportunity to practice their in-court adversarial skills. Moreover, it impressed upon the prosecutors that a defense lawyer better able to use his or her skills will defeat a prosecutor who fails to employ the proper techniques.

¶13. In fact, that is just what happened. The attorneys who listened to the lecture, asked questions, and tried to learn the skills were more successful in the mock jury trials than those attorneys who simply believed that they would succeed because they are prosecutors. The successful attorneys focused on basic principles such as using cross examination to undermine the opponent's witness, using direct examination to obtain the facts necessary to prove their case, and collecting these facts in a cogent argument that explained to the jury why the defendant was guilty or innocent. Furthermore, the "all prosecutors" trials identified for the regional supervisors and the OPP those prosecutors who are ready to conduct trials under the new CPC and those prosecutors who still need additional practice. Several prosecutors commented after the trials that they must begin to take the new approach more seriously. If they failed to learn the necessary skills, they would not be as successful and their jobs would be in jeopardy.

We Can Work It Out

¶14. The sense of urgency was readily apparent during the mock jury trials in Batumi, Georgia. Here, the prosecutors demonstrated a basic understanding of the in-court adversarial skills necessary to prosecute cases. In addition, they worked on understanding the theory behind the skills rather than simply learning the skills. For example, the prosecutors understood that cross examination requires them to ask leading questions using one fact per question - a new skill for the Georgia criminal bar - but they tried to better understand what they wanted to accomplish by using this skill. The defendant was expected to introduce his employer as a witness. The prosecutors, initially, believed that they needed make

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the witness confess on the stand that he was biased in the defendant's favor - something no witness would ever do. They did not believe that they could use their skills to obtain this admission.

¶15. After much discussion, the prosecutors understood that they did not need to make the witness confess his bias. Instead, they needed to use cross examination to obtain the facts that would allow them to argue during closing argument that the witness's testimony could not be trusted because he was biased. Cross examination, they finally understood, will rarely result in a witness's admission that

he is opposed to the defendant's conviction. Indeed, the defendant would not call the witness to testify if he would make that admission. Instead, the prosecutors need to use cross examination to support their arguments so that the jury takes into account the witness's limitations, such as bias, when they are determining which witnesses to believe.

I Want to Hold Your Hand

¶16. Finally, in the last regional mock jury trials held in Zugdidi, the regional supervisor grasped the importance of the new skills and played an active role in seeing that his prosecutors learned them. Although the other regional supervisors supported the program and helped DOJ/OPDAT review the skills with their prosecutors, they simply introduced themselves and allowed the program to continue. The Zugdidi regional supervisor, by contrast, participated in the program. He listened to the lecture and observed the mock jury trials. Based on his observations, he identified which prosecutors learned the skills and which prosecutors need additional assistance. Moreover, he videotaped the seminar so that those prosecutors who need additional assistance can view the seminar again and work with the successful prosecutors to learn the necessary skills. He demonstrated a commitment to guaranteeing that all of the prosecutors are ready to use the new skills upon the CPC's passage.

The Long and Winding Road

¶17. Comment. The path to building a Western style in-court adversarial system is a long and winding road, but Georgia appears to be well down that path. The criminal bar -- prosecutors, defense lawyers, and judges -- are learning the skills necessary to successfully try cases under the new CPC. Moreover, court clerks recently returned from visits to Atlanta, Georgia and New York, New York where they met with their U.S. counterparts and exchanged ideas about the best practices necessary to build proper jury rolls, conduct juror orientation, and manage jury trials. Additionally, Georgia's Supreme Court began conducting seminars and weekly television programs to educate the public about the new system and their new rights in it. Finally, Georgia's Legal Affairs Committee recently reviewed the draft CPC article by article in anticipation of the Second Reading to be held by year's end. Completing the transition from the Soviet style accusatorial system to the Western style in-court adversarial system has been a hard day's night, and it is not complete. However, Georgia is working eight days a week to get the job done. End Comment.

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